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MAR 24 2010

OFFICE OF PETITIONS

In re Application of	:	
Eric Lechevin, et al.	:	
Application No. 10/031,274	:	DECISION ON PETITION
Filed: June 11, 2002	:	
Attorney Docket No. LAVOI1.001APC	:	

This is a decision on the petition, filed November 30, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice Under 37 CFR 1.251-Pending Application mailed March 21, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 30, 2009.

Petitioner asserts that the Notice dated March 21, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice Under 37 CFR 1.251, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and

3. a copy of the docket record where the nonreceived Notice would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 3617 for processing of the reply to the Notice Under 37 CFR 1.251 submitted with the petition.



Chris Bottorff
Petitions Examiner
Office of Petitions